

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

JEANNE M. SULLIVAN,
Plaintiff,

v.

DAVID J. SULLIVAN,
Defendant.

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Civil Action No. 3:02CV916 (CFD)

RULING ON MOTION TO DISMISS

The defendant has filed a motion to dismiss the plaintiff's amended complaint [Doc. #25] on the basis of Federal Rules of Civil Procedure 12(b)(2) for lack of personal jurisdiction, 12(b)(5) for insufficiency of service of process, and 12(b)(6) for failure to state a claim upon which relief can be granted. The defendant also moved to dismiss the plaintiff's claim of fraud on the basis of Federal Rule of Civil Procedure 9(b) for failing to allege with particularity the circumstances constituting fraud. A hearing on the issues relating to service of process was held before the Court on September 15, 2003.

The defendant, David J. Sullivan, contends that the Court lacks personal jurisdiction over him because he was not served. Specifically, the defendant claims that the summons and complaint were served not on him, but rather on his brother, James Sullivan. However, the Court finds that David J. Sullivan was served with the summons and complaint by Connecticut State Marshal Arthur Quinn.¹ Marshal Quinn's testimony and affidavit set forth the details of the personal service on David J. Sullivan, which the Court credits, as follows: On May 30, 2002, Suzanne Xanthos, David Sullivan's sister,

¹The Court views James Sullivan's testimony on this issue as mistaken or a failure of recollection, not perjurious.

pointed David Sullivan out to Marshal Quinn at the Torrington Town Hall following a probate court proceeding involving the parties to this action. Marshal Quinn then approached David Sullivan and asked him if he was David Sullivan. David Sullivan responded affirmatively and Marshal Quinn handed him the summons and complaint. Thus, the Court declines to dismiss the plaintiff's amended complaint on the basis of insufficiency of service of process or lack of personal jurisdiction on the basis that David Sullivan was not properly served.

The defendant also contends that the Court lacks personal jurisdiction over David Sullivan because he was immune from service of process on May 30, 2002. David Sullivan, a Bermuda resident with no apparent property or business in Connecticut, was in the state of Connecticut for the sole purpose of appearing and providing testimony at the probate court hearing when he was served at the Torrington Town Hall.

Courts have recognized that non-resident witnesses, parties, and attorneys, during the period required for their attendance in court for one suit, are not subject to service of process in another suit. Stewart v. Ramsay, 242 U.S. 128 (1916); Shapiro & Son Curtain Corp. v. Glass, 348 F.2d 460 (2d Cir.), cert. denied, 382 U.S. 942 (1965). However, there is an exception to this "immunity" where "the immunity itself, if allowed, would so obstruct judicial administration in the very cause for the protection of which it is invoked as to justify withholding it." Lamb v. Schmitt, 285 U.S. 222, 228 (1932). In Lamb, the Court denied immunity to an attorney, who, while acting as counsel in one suit, was served with process in another related suit. Id. at 227-28. Since the Court found that the second suit was brought "in aid of the first" and "to secure rights asserted in the first suit," the Court concluded that immunity from service of process in the second suit would obstruct the due administration of justice in

the first suit. Id. at 227. Similarly, in McDonnell v. Am. Leduc Petroleums, Ltd., 456 F.2d 1170, 1179-80 (2d Cir. 1972), the Second Circuit denied immunity to a defendant who was served with a suit for fraudulent dealings with a debtor, while attending a bankruptcy proceeding relating to the same debtor. The Second Circuit pointed out that the “two proceedings involve vindication of the same cluster of rights and interests” and “the very purpose of a section 167 investigation is to uncover for the trustee conducting it possible causes of action, including actions against those called to testify.” Id. at 1180.

The present suit against David Sullivan is closely related to the Torrington probate court proceeding and involves “the same cluster of rights and interests.” Both were intended to determine whether personal property and real estate, including cash, securities, checks, and personal documents, were taken fraudulently from Jeanne Sullivan by her son, David Sullivan. The probate court had issued a show cause order compelling both David Sullivan and Suzanne Xanthos (David Sullivan’s sister and daughter of Jeanne Sullivan) to appear on May 30, 2002 to explain why a contempt order should not issue because they failed to file an accounting of their transactions while holding the Power of Attorney for Jeanne Sullivan. David Sullivan conceded at the hearing on the instant motion that the propriety of his conduct relating to his mother’s assets and property was specifically discussed at the probate court hearing. Similar to the bankruptcy proceeding in McDonnell, the purpose of the probate court hearing was to have David Sullivan file an accounting of his actions as the holder of the Power of Attorney from Jeanne Sullivan in response to a claim by Suzanne Xanthos that Jeanne Sullivan’s assets “are missing and/or are unaccounted for.” Exh. 3, Defendant’s Memorandum of Law in Support of Motion to Dismiss. This action was brought on behalf of Jeanne Sullivan alleging conversion, fraud, and related

misconduct by David Sullivan in connection with his use of Jeanne Sullivan's assets. Although the McDonnell court pointed out that "mere similarity of subject matter in two proceedings does not itself justify withholding immunity for purposes of service in the second," 456 F.2d at 1179, the probate court was examining questions of fraud involving David Sullivan and his mother's assets, the very same inquiry brought by her conservator here.² Thus, the Court finds that the two proceedings involve the vindication of the same cluster of rights and interests and immunity would obstruct the judicial administration of the first action. Finally, as to David Sullivan's claim that he was improperly "lured" to Connecticut on May 30, 2002 solely for the purpose of serving him with this action, the Court concludes otherwise. The probate court proceeding was concerned with substantial issues requiring probate court attention. Accordingly, the Motion to Dismiss [Doc. #25] is DENIED as to the claims of lack of personal jurisdiction and insufficiency of process.

It is also DENIED as to the other claims made in the Motion to Dismiss.

SO ORDERED this _____ day of September 2003, at Hartford, Connecticut.

CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE

²In fact, the probate court authorized the independent third-party conservator, who had been appointed by the probate court, to continue with this federal action.